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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,715	07/20/2001	Brian J. Cox	18455.11	1492

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EXAMINER

EREZO, DARWIN P

ART UNIT PAPER NUMBER

3731

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/909,715

Applicant(s)

COX, BRIAN J.

Examiner

Darwin P. Erez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 44-47, 54-56, 59-61 and 64-100 is/are pending in the application.
- 4a) Of the above claim(s) 59, 70-75, 78-80 and 86 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 69, 81-85 and 95-100 is/are allowed.
- 6) ☒ Claim(s) 44-47, 54-56, 60, 61, 64-68, 76, 77 and 87-94 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/5/05 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 44-47, 54-56, 60, 61, 64-68, 76, 77, 87-94 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,843,089 to Sahatjian et al. and evidenced by US 5,514,379 to Wiessler et al.

Sahatjian teaches a stent having fenestrations (an interwoven stent); wherein the stent has a cylindrical body that is expandable between a first diameter (Fig. 1) and a second diameter (Fig. 3); and a reactive material comprising hydrogel, which is an expandable polymer (col. 1, line 66 – col. 2, line 9). Sahatjian also discloses that the hydrogel may be cross-linked *in situ* (col. 2, line 14-19). Since Sahatjian teaches the use of a hydrogel, it would be inherent that the hydrogel would have a first state of

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protonation prior to implantation and have a second state of protonation after implantation. As evidenced by Wiessler, hydrogels that are crosslinked absorb large amounts of water (col. 3, line 36-39). Since Sahatjian teaches a fenestrated stent lined with a hydrogel, it would be inherent that the fenestration openings will decrease in size once the hydrogels have absorb water and swell up. Wiessler also provides evidence that hydrogels react to different pHs (listed under the Examples cited in the reference). Furthermore, since Sahatjian discloses a hydrogel composition, it would inherently contain all of the characteristics cited in the claims. Also, the stent of Sahatjian is fully capable of being delivered in various methods and the diameter of the expanded stent can be substantially equal to a blood vessel (intended use/functional language). Also, Sahatjian teaches an interwoven stent, which means it could expand radially and axially; and wherein the stent is formed from stainless steel (col. 1, line 36), which is both radio-opaque and echogenic. It should also be noted that the hydrogel can be selectively applied to just portions of the stent.

***Allowable Subject Matter***

4. Claims 69, 81-85 and 95-100 are allowed.

***Response to Arguments***

5. Applicant's arguments with respect to claims 44-47, 54-56, 60, 61, 64-68, 76, 77, 87-94 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erezzo whose telephone number is (571) 272-4695. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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GLENN K. DAWSON  
PRIMARY EXAMINER